

PREVAILED

Roll Call No. \_\_\_\_\_

FAILED

Ayes \_\_\_\_\_

WITHDRAWN

Noes \_\_\_\_\_

RULED OUT OF ORDER

## HOUSE MOTION \_\_\_\_\_

MR. SPEAKER:

I move that Engrossed Senate Bill 362 be amended to read as follows:

- 1           Page 2, line 22, delete "The" and insert "**Except as provided in**
- 2           **subsection (k), the**".
- 3           Page 2, line 26, delete "notify a retail merchant who is delinquent"
- 4           and insert "**do the following:**
- 5               **(1) Make a proposed assessment under IC 6-8.1-5 against the**
- 6               **retail merchant in the amount of the sales and use taxes that**
- 7               **the retail merchant is delinquent in remitting to the**
- 8               **department.**
- 9               **(2) Notify the retail merchant that the department will not**
- 10              **renew the retail merchant's registered retail merchant's**
- 11              **certificate."**
- 12           Page 2, delete lines 27 through 28.
- 13           Page 3, between lines 16 and 17, begin a new paragraph and insert:
- 14           **"(k) The department may renew a registered retail merchant's**
- 15           **certificate if the retail merchant complies with the following**
- 16           **requirements:**
- 17               **(1) The retail merchant does either of the following:**
- 18                   **(A) Commences settlement negotiations with the**
- 19                   **department with regard to the proposed assessment made**
- 20                   **under subsection (g).**
- 21                   **(B) Files a written protest of the proposed assessment made**
- 22                   **under subsection (g).**
- 23               **(2) The retail merchant applies within ten (10) days of**
- 24               **receiving the notice required under subsection (g) for a**

renewal of the retail merchant's registered retail merchant's certificate on a form prescribed by the department.

The department shall rule on the retail merchant's application at least thirty (30) days before the date on which the retail merchant's registered retail merchant certificate expires.

(l) A retail merchant whose application for a renewed registered retail merchant's certificate is denied by the department under subsection (k) may petition the tax court to set aside the department's denial of the retail merchant's application. A petition filed under this subsection is subject to the requirements of IC 33-26-6-2(e). The tax court shall conduct a hearing and rule on the petition before the date on which the retail merchant's registered retail merchant certificate expires.

(m) After a hearing on a petition filed under subsection (l), the tax court may set aside the department's denial of the retail merchant's application for a renewed registered retail merchant's certificate if the tax court finds that:

- (1) the issues raised by the petitioner are substantial;
- (2) the petitioner has a reasonable opportunity to prevail in any original tax appeal that might arise from the department's proposed assessment of the petitioner's sales and use tax liability; and
- (3) the equitable considerations favoring the setting aside of the department's denial of the petitioner's application for a renewed registered retail merchant's certificate outweigh the state's interests in refusing to renew the taxpayer's registered retail merchant certificate."

Page 14, between lines 9 and 10, begin a new paragraph and insert:

"SECTION 12. IC 33-26-6-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2007]: Sec. 2. (a) A taxpayer who wishes to initiate an original tax appeal must file a petition in the tax court to set aside the final determination of the department of state revenue or the Indiana board of tax review. If a taxpayer fails to comply with any statutory requirement for the initiation of an original tax appeal, the tax court does not have jurisdiction to hear the appeal.

(b) A taxpayer who wishes to enjoin the collection of a tax pending the original tax appeal must file a petition with the tax court to enjoin the collection of the tax. The petition must set forth a summary of:

- (1) the issues that the petitioner will raise in the original tax appeal; and
- (2) the equitable considerations for which the tax court should order the collection of the tax to be enjoined.

(c) After a hearing on the petition filed under subsection (b), the tax court may enjoin the collection of the tax pending the original tax appeal, if the tax court finds that:

- (1) the issues raised by the original tax appeal are substantial;
- (2) the petitioner has a reasonable opportunity to prevail in the

1 original tax appeal; and

2 (3) the equitable considerations favoring the enjoining of the  
3 collection of the tax outweigh the state's interests in collecting the  
4 tax pending the original tax appeal.

5 (d) This section does not apply to a final determination of the  
6 department of state revenue under IC 4-32 other than a final  
7 determination concerning the gaming card excise tax established under  
8 IC 4-32-15.

9 **(e) This subsection applies to a taxpayer who petitions the tax**  
10 **court under IC 6-2.5-8-1(l) to set aside a denial of an application to**  
11 **renew a registered retail merchant's certificate. The petition must**  
12 **set forth a summary of:**

13 **(1) the issues that the petitioner will raise in contesting the**  
14 **department of state revenue's underlying proposed assessment**  
15 **of the petitioner's sales and use tax liability; and**

16 **(2) the equitable considerations for which the tax court should**  
17 **order the department of state revenue to renew the retail**  
18 **merchant's registered retail merchant's certificate.".**

19 Renumber all SECTIONS consecutively.

(Reference is to ESB 362 as printed February 24, 2006.)

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Representative Avery